EXPLANATION OF

26

# فروع الفقه

## Ibn Al-Mibrad

Shaykh Ahmad Musā Jibrīl

May Allāh (سبحانه وتعالى) ease the affairs of the Shaykh, preserve him, love him, and safeguard him from all harm. May He (سبحانه وتعالى) keep him sincere, and continue to shower his life and Da'wah with His blessings, and allow the Muslims to benefit from his da'wah until the Day of Judgement. May Allāh make all his efforts weigh heavy on his scales, and make it an immense Sadaqah Jāriyah for him, his parents, and his family. May Allāh facilitate the completion of this Sharh and shower him with His aid always and forever.

SH_AHMAD_JIBRIL

SH_AHMAD_JIBRIL

T.ME/AHMAD_MUSA_JIBRIL

SHAYKH AHMAD MUSĀ JIBRĪL

SHAYKH AHMAD MUSĀ JIBRĪL

بسم الله الرحمن الرحيم

الحمد لله رب العالمين، والعاقبة للمتقين، والصلاة والسلام على عبده ورسوله وخليله وصفوته من خلقه، نبينا وإمامنا وسيدنا محمد، وعلى آله واصحابه ومن سلك سبيله واهتدى بهداه الى يوم الدين، اما بعد:

## Recap

We're on the nullifiers of Wudū', and the author said:

والنواقض في الطهارة الصغرى ثمانية

There are 8 nullifiers of Wudū'. الخارج من السبيلين, anything exiting from the two private parts. The second one is والفاحش من غيرهما, what's repulsive that exits from other than the two private parts. The third one is what pertains to sleeping, وزوال العقل بغير نوم يسير جالسا أو قائما. The fourth one is ومس الفرج, touching the private parts, and under touching the private parts, we took six main Masā'il. Let me repeat the Rājih on each one of those Masā'il.

- On the first Mas'alah, we said the Rājih is that the Wudū' of a male who touches his sexual organ without a barrier is nullified.

- The next Mas'alah, we said a woman who touches her sexual organ without a barrier, her Wudū' is nullified.

- The third Mas'alah, we said a spouse touching the private parts of another, their Wudū' is not nullified. The third one is the one *touching*.

- The fourth Mas'alah is the one being touched. The spouse whose private parts were touched, their Wudū' is not nullified.

- And the fifth Mas'alah, we said it's disputed whether touching the rectum is a nullifier of Wudū', and we said that the Rājih is that it's not. What's not disputed is the buttocks, it's not a nullifier without a dispute.

- And the sixth Mas'alah we took pertains to touching the testicles, we said touching the testicles is not a nullifier of Wudū'.

## Nullifier #5 – والمرأة لشهوة

Today we'll start on the fifth nullifier Inshā'Allāh.

والمرأة لشهوة

Touching a woman with desire. The author clearly adopts the opinion that touching a woman with desire nullifies the Wudū', and that's the opinion of the Hanābilah. They also have another opinion that it doesn't nullify the Wudū'.

## Ar-Rājih

We'll start with the Rājih, a summary of the Rājih, as was suggested to me, before we get into the details for Tullāb Al-'Ilm. The Rājih is that touching a woman does not nullify the Wudū', whether it's with desire or without desire, whether it's over a barrier (meaning like clothes) or without a barrier (like being bare). That's, of course, if there is no discharge of Madhiy. If there is discharge of Madhiy, then the Wudū' is nullified, not because of the touching, but due to the discharge of Madhiy, which is a separate nullifier. Just like the Masā'il we took in the last two classes, the six Masā'il that I gave a summary on. We said the first two are nullifiers of Wudū' and the other four are not nullifiers of Wudū'. Let's assume there is discharge of Madhiy pertaining to any of the last four Masā'il, the ones that we said do not nullify Wudū'. In that case, the Wudū' would be nullified due to the discharge of the Madhiy, not the touching aspect of it. In the first two Masā'il, if a man or a woman touched their own private parts, we said that's a nullifier of Wudū'. If one touches their private parts and there is a discharge of Madhiy then there will be two causes for Wudū' — for touching the private part and separately for the discharge of Madhiy. So, keep that in mind.

Now let's get into the details of our main Mas'alah pertaining to touching a woman.

- The first opinion is that touching a woman nullifies Wudū' unconditionally. That's the opinion of the Shāfi'īyyah. It's a very famous opinion within the Shāfi'ī Madhhab and it's the weakest of the three opinions that we'll take inshā'Allāh. They use the verse:

أَوْ لَـٰمَسْتُمُ ٱلنِّسَآءَ

لَـٰمَسْتُمُ in the verse means touching a woman they said, and it's among the other nullifiers of Tahārah. They said لَـٰمَسْتُمُ means to touch. They took it literally, meaning touching a wife. And they said it's among other nullifiers of Tahārah, so it's a nullifier. And then they backed that up by bringing other proof to show from other verses and Ahādīth where لمس is used to mean only touch, like in the Hadīth where the Messenger (ﷺ) deterred from a business transaction called Bay' Al-Mulāmasah, the transaction of touching. In Sahīh Muslim, and worded slightly differently in Sahīh Al-Bukhāri, the Messenger (ﷺ) defined it. He said,

الْمُلاَمَسَةُ لَمْسُ الرَّجُلِ ثَوْبَ الآخَرِ بِيَدِهِ بِاللَّيْلِ أَوْ بِالنَّهَارِ

It's to buy a garment, for example, by merely touching it, night or day and without looking at it. It's among the transactions that were known in the time of Jāhiliyyah that Islām abolished. An example would be a seller saying if you touch

something, the sale is concluded, even if the buyer didn't see it at all. It could be folded in a bag and just by touching it, without seeing it, the deal is finalized.

We haven't gotten into the chapter of business transactions yet, but why did we mention this here? The Shāfi'īyyah said أَوْ لَـٰمَسْتُمُ ٱلنِّسَآءَ means to merely touch a woman, to touch the wife, not necessarily sexual intercourse. Then they backed that by Ahādīth and Āyāt where the term لمس comes to mean 'touch' like in this Hadīth on Bay' Al-Mulāmasah. Another example is in the Āyah,

وَلَوْ نَزَّلْنَا عَلَيْكَ كِتَٰبًا فِى قِرْطَاسٍ فَلَمَسُوهُ بِأَيْدِيهِمْ لَقَالَ ٱلَّذِينَ كَفَرُوٓا۟ إِنْ هَـٰذَآ إِلَّا سِحْرٌ مُّبِينٌ

Allāh told the Messenger (ﷺ) "If we send down a revelation in writing", فَلَمَسُوهُ بِأَيْدِيهِمْ, "And they touch it with their own hands, the Kuffār will still say it's only magic." The term in the verse فَلَمَسُوهُ, "If they were to touch it with their own hands."

And likewise is Hadīth Mā'iz رضي الله عنه, the Sahābi who committed Zinā and confessed to the Messenger (ﷺ). In one of the narrations, the Messenger (ﷺ) asked him, "Is it possible that you only kissed her or touched her?" لعلكَ قبَّلتَ أو لَمستَ? لمس here, comes to mean 'touch'. They said touching in 'Arabi refers to sexual intercourse *and* merely touching, and up to here, we agree with them on that, that's correct. But then they said since it applies to *both* sexual intercourse and merely touching, it should be taken in the broader context. What's the

broader context? Merely touching. Why is it the broader context? Because it would encompass and include intercourse with it.

The response is, first of all, like we said, in 'Arabi لمس does come to mean touching and it does come to mean sexual intercourse. That's clear. The question is, what's intended in the verse? Pay attention and focus because the next point relates to Balāghah, and Balāghah in the Qur'ān is somewhat difficult to explain in English. أَوْ لَٰمَسْتُمُ ٱلنِّسَآءَ is in the verse that we took so many times:

يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُوٓاْ إِذَا قُمْتُمْ إِلَى ٱلصَّلَوٰةِ فَٱغْسِلُواْ وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى ٱلْمَرَافِقِ وَٱمْسَحُواْ بِرُءُوسِكُمْ وَأَرْجُلَكُمْ إِلَى ٱلْكَعْبَيْنِ ۚ وَإِن كُنتُمْ جُنُبًا فَٱطَّهَّرُواْ ۚ وَإِن كُنتُم مَّرْضَىٰٓ أَوْ عَلَىٰ سَفَرٍ أَوْ جَآءَ أَحَدٌ مِّنكُم مِّنَ ٱلْغَآئِطِ أَوْ لَٰمَسْتُمُ ٱلنِّسَآءَ فَلَمْ تَجِدُواْ مَآءً فَتَيَمَّمُواْ صَعِيدًا طَيِّبًا فَٱمْسَحُواْ بِوُجُوهِكُمْ وَأَيْدِيكُم مِّنْهُ

That verse contains two matters: Tahārah from major and minor impurity, and Tahārah with both water and Tayammum. For Tahārah with water, Allāh سبحانه وتعالى mentioned the major and minor purification pertaining to it, and for Tahārah and Tayammum Allāh سبحانه وتعالى mentioned the major and minor purification pertaining to it. It's like a table with four legs. Purification with water, Allāh سبحانه وتعالى mentioned the major and minor purification. For minor purification with water, Allāh سبحانه وتعالى said,

إِذَا قُمْتُمْ إِلَى ٱلصَّلَوٰةِ فَٱغْسِلُوا۟ وُجُوهَكُمْ وَأَيْدِيَكُمْ

For major purification with water, Allāh سبحانه وتعالى said,

وَإِن كُنتُمْ جُنُبًا فَٱطَّهَّرُوا

Then the verse goes on to Tayammum. It mentions major and minor purification with Tayammum.

For minor purification with Tayammum, Allāh سبحانه وتعالى said,

أَوْ جَآءَ أَحَدٌ مِّنكُم مِّنَ ٱلْغَآئِطِ

For major purification with Tayammum, Allāh سبحانه وتعالى said,

أَوْ لَـٰمَسْتُمُ ٱلنِّسَآءَ

Here's the issue now. If you say touching — أَوْ لَـٰمَسْتُمُ ٱلنِّسَآءَ — means touching only, literal touching as the Shāfi'īyyah say, not sexual intercourse, then as it pertains to Tayammum, there is no mention of major purification with Tayammum. The verse mentioned major and minor purification with water, it mentioned minor purification with Tayammum, but no major purification with Tayammum — *if* you

go with the meaning of Shāfi'īyyah that أَوْ لَـٰمَسْتُمُ ٱلنِّسَآءَ is merely touching. And that goes against the Balāghah of the Qur'ān.

Let me repeat it in a summary. When you say 'touching' here in this verse means merely touching (أَوْ لَـٰمَسْتُمُ ٱلنِّسَآءَ), not sexual intercourse, you're implying that Allāh سبحانه وتعالى mentioned major and minor purification for Tahārah with water. Then, with Tayammum, He mentioned minor purification with Tayammum, but no major purification with Tayammum. It's left out. That's how it goes if you say أَوْ لَـٰمَسْتُمُ ٱلنِّسَآءَ is touching rather than sexual intercourse. It goes against the Balāghah of the Qur'ān. It's like a table with four legs and one of those legs is broken.

Another response to them using the verse the way they did is that Ibn 'Abbās رضي الله عنهما interpreted 'touching' in that verse as sexual intercourse. That's the first proof for the Shāfi'īyyah who say أَوْ لَـٰمَسْتُمُ ٱلنِّسَآءَ is merely touching, not sexual intercourse. That's the first proof and the response to how they use the proof.

The second proof they use is an Athar in Muwattā' Mālik. An Athar, a statement by Ibn 'Umar رضي الله عنهما, and it's that Ibn 'Umar رضي الله عنهما said that kissing a wife or touching her is Mulāmasah. So, whoever kisses his wife or touches her must make Wudū', and it appears to be authentic.

A third proof that they use is similar to the second one, which is an Athar in Musannaf 'Abd Ar-Razzāq where Ibn Mas'ūd رضي الله عنه said that one should perform Wudū' from touching a woman or kissing her.

The opinion of Ibn 'Umar and Ibn Mas'ūd on one hand is the opposite of the opinion of Ibn 'Abbas رضي الله عنهم اجمعين. Ibn 'Abbās adopted that لَٰمَسْتُمُ ٱلنِّسَآءَ is sexual intercourse. Sa'īd Ibn Jubayr said, "I got in a dispute with some 'Arabs pertaining to the meaning of أَوْ لَٰمَسْتُمُ ٱلنِّسَآء." Sa'id Ibn Jubayr said, "I said that لمس here in لَٰمَسْتُمُ ٱلنِّسَآء is what's less that sexual intercourse," meaning touching. The 'Arab said it's sexual intercourse. So they went to Ibn 'Abbās رضي الله عنهما to judge and he said the 'Arab won, it's sexual intercourse. Now when the Sahābah dispute like this, we see what's stronger and what's closer to the proof, and what we mentioned pertaining to the Balāghah in that verse is very strong, in addition to the proof that were mentioned with the third opinion.

Keep in mind what I mentioned also when I talked about euphemism in the Qur'ān, that there are a lot of other verses like this where لمس comes to mean sexual intercourse.

لَّا جُنَاحَ عَلَيْكُمْ إِن طَلَّقْتُمُ ٱلنِّسَآءَ مَا لَمْ تَمَسُّوهُنَّ

لمس here, in that verse, is sexual intercourse.

وَإِن طَلَّقْتُمُوهُنَّ مِن قَبْلِ أَن تَمَسُّوهُنَّ وَقَدْ فَرَضْتُمْ لَهُنَّ فَرِيضَةً

that is sexual intercourse.

يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُوٓاْ إِذَا نَكَحْتُمُ ٱلْمُؤْمِنَٰتِ ثُمَّ طَلَّقْتُمُوهُنَّ مِن قَبْلِ أَن تَمَسُّوهُنَّ فَمَا لَكُمْ عَلَيْهِنَّ مِنْ عِدَّةٍ تَعْتَدُّونَهَا

So, in those verses, لمس is sexual intercourse, not touching. So it is true, we can't dispute that لمس comes both ways, for mere touching and sexual intercourse.

Ibn Taymiyyah said, "Ordering Wudū' from touching a wife without desire is not the opinion of any Sahābah, nor is it narrated by the Messenger (ﷺ), even though it is a common widespread matter and it's something essential for us to know." It's a common matter, and had it been a nullifier, the Messenger (ﷺ) would have taught it to us. What he means by saying it's a common, widespread matter, meaning it's something that occurs daily. Not just daily, but numerous times a day. When spouses exchange items, they touch each other's hands. It's something that occurs daily, and had it been something that was a nullifier of Wudū', the Messenger (ﷺ) would have taught it to us.

Ibn Al-Mundhir رحمه الله تعالى said it's by Ijmā' from those who we memorized knowledge from, that there's no Wudū' needed from a man kissing his mother or daughter or sister, if he's being dutiful to them or honoring them or if they return, for example, from a journey, or when one touches them when handing each other objects. He said the only exception is what's been related by Ash-Shāfi'ī. He said that it's even been related that Ash-Shāfi'ī has two opinions on this matter. One requiring Wudū' from merely touching a woman, and another like the rest of the Ulamā'. Then he doubted if the opinion of merely touching a

woman nullifies the Wudū' is actually an opinion of Ash-Shāfi'ī. Then he said if it is accurately attributed to him, his other opinion not requiring Wudū' would be the better one to go by. That's the first opinon.

- The second opinion is that touching a woman nullifies Wudū' if it's with desire. Without desire it's not a nullifier of Wudū'. This is the Mālikiyyah and a second opinion of the Hanābilah. Their proof is that touching with desire, it's usually combined with the discharge of Madhiy. They said even if it's rare, then we go by what's safer. We require Wudū' when touching a woman with desire because it's safer. Then they also tried to combine between proofs. They used the verse أَوْ لَـٰمَسْتُمُ ٱلنِّسَآء in the same way the Shāfi'īyyah used it. They said أَوْ لَـٰمَسْتُمُ ٱلنِّسَآء here means to merely touch, doesn't say desire or not desire. But then they mention the Hadīth, Hadīth Ā'ishah

كُنْتُ أَنَامُ بَيْنَ يَدَىْ رَسُولِ اللَّهِ (ﷺ) وَرِجْلاَىَ فِي قِبْلَتِهِ، فَإِذَا سَجَدَ غَمَزَنِي فَقَبَضْتُ رِجْلَىَّ، فَإِذَا قَامَ بَسَطْتُهُمَا

"I was sleeping in front of the Messenger (ﷺ)," she said, رضى الله عنها, "And my legs were between him and the Qiblah." When he would head to Sujūd he would pinch her, because her legs were in his way (ﷺ) so she can move her legs. Then when she saw that he stood up she would stretch them out again.

قَالَتْ وَالْبُيُوتُ يَوْمَئِذٍ لَيْسَ فِيهَا مَصَابِيحُ

She said, "That was at a time when the houses didn't have lamps." The Ulamā' here said the verse أَوْ لَـٰمَسْتُمُ ٱلنِّسَآءَ says make Wudū' if you touch. Hadīth Ā'ishah indicates that the Messenger (ﷺ) pinched her while he was in Salāh, which means he touched her. He didn't make Wudū' because he was in Salāh, so they said we'll combine between the proofs, the verse and the Hadīth, and we'll say that touching means touching with desire only.

- The third opinion is the correct opinion, that touching a woman does not nullify Wudū'. That's the opinion of the Hanafiyyah, and it's a third opinion of the Hanābilah, and As-San'āni chose it. They said touching a wife or a sister or a mother doesn't nullify Wudū' unless there is discharge of Madhiy, like we mentioned.

  Their proof, first of all the strongest proof, is that there is no proof. There is no clear, authentic proof that touching a woman nullifies Wudū'. The proofs are not explicit or clear. In order to say something nullifies Wudū', as we reiterated many times, it has to be clear, authentic, or an Ijmā'.

  A second proof is a Hadīth in Sahīh Muslim. Ā'ishah said,

فَقَدْتُ رَسُولَ اللَّهِ (ﷺ) لَيْلَةً مِنَ الْفِرَاشِ فَالْتَمَسْتُهُ فَوَقَعَتْ يَدِي عَلَى بَطْنِ قَدَمَيْهِ وَهُوَ فِي الْمَسْجِدِ وَهُمَا مَنْصُوبَتَانِ وَهُوَ يَقُولُ " اللَّهُمَّ أَعُوذُ بِرِضَاكَ مِنْ سَخَطِكَ وَبِمُعَافَاتِكَ مِنْ عُقُوبَتِكَ وَأَعُوذُ بِكَ مِنْكَ لاَ أُحْصِي ثَنَاءً عَلَيْكَ أَنْتَ كَمَا أَثْنَيْتَ عَلَى نَفْسِكَ

She said, رضى الله عنها, I noticed that the Messenger (ﷺ) was missing from bed, so she said I went looking for him and I found him in the Masjid with his feet upright. They were upright as we have them while we're in Sujūd., because the Messenger (ﷺ) was in Sujūd. She said, and my hand touched the soles of his feet while he was in Sujūd and his feet were upright. What's the point of that? Had it been a nullifier, the Messenger (ﷺ) would have objected to her touching him during Salāh. He would have possibly ended the Salāh and made Wudū' and taught us to make Wudū'.

Some Shāfi'īyyah responded to this, and they said she probably touched him over the clothes, through a barrier. لعله كان من فوق حائل. Ash-Shawkāni رحمه الله تعالى said that's incorrect, because it's against the apparent understanding of the Hadīth.

A third Hadīth is a Hadīth in Sahīh Al-Bukhāri, with a slightly different wording in Sahīh Muslim.

خَرَجَ عَلَيْنَا النَّبِيُّ (ﷺ) وَأُمَامَةُ بِنْتُ أَبِي الْعَاصِ عَلَى عَاتِقِهِ، فَصَلَّى فَإِذَا رَكَعَ وَضَعَهَا، وَإِذَا رَفَعَ رَفَعَهَا

The term وَضَعَ here in this Hadīth means to put her down — وضع بحرف المفعول. Or وَضَعَهَا, you can say وَضَعَهَا, both are correct. I remember some brothers were confused when they were memorizing Ahādīth from Sahīh Al-Bukhāri with us. Some had it in their books وَضَعَ, in their edition, and some others had it وَضَعَهَا. Both are linguistically correct and proper, and Ibn Hajr رحمه الله تعالى said both are correct.

"The Messenger (ﷺ) was leading the Salāh and Umāmah was on his shoulders. When the Messenger (ﷺ) bowed, he put her down. When he got up, after he got up from Sujūd, he would pick her up again." Umāmah is the daughter of Zaynab رضى الله عنها, Zaynab is the daughter of RasūlAllāh(ﷺ) so that makes Umāmah the granddaughter of the Messenger (ﷺ). The point is, he would carry her in Salāh. She's a girl, so that means touching a woman does not nullify Wudū'.

And Umāmah, by the way, was very much beloved to the Messenger (ﷺ). When she grew up, she married 'Ali رضى الله عنه after the death of her aunt Fātimah, based on the request of Fātimah before she died. Fātimah رضى الله عنها is the daughter of the Messenger (ﷺ), so Fātimah would be her maternal aunt. You can't, of course, combine in marriage between an aunt and a niece. After the death of Fātimah, Umāmah married 'Ali ضي الله عنهم اجمعين.

The fourth proof used by the Ulamā' who say touching a woman is not a nullifier of Wudū' is Hadīth Ā'ishah, the one we mentioned earlier.

كُنْتُ أَنَامُ بَيْنَ يَدَىْ رَسُولِ اللَّهِ (ﷺ) وَرِجْلاَىَ فِي قِبْلَتِهِ، فَإِذَا سَجَدَ غَمَزَنِي

The Messenger (ﷺ) would pinch her in Salāh so she can move her legs when he's about to make Sujūd. They said the Messenger (ﷺ) pinched her in Salāh, had it been a nullifier, he would not touch her in Salāh. So, it's proof that touching a woman is not a nullifier.

Then there is some weak proof the Ulamā' who adopt this opinion used, and among them is one in Musnad Ahmad, Hadīth Ā'ishah:

أن النبي (ﷺ) قَبَّلَ بعض نسائه، ثم خرج إلى الصلاة ولم يتوضَّأ

Ā'ishah said, "The Messenger (ﷺ) kissed some of his wives then went to perform Salāh and did not make Wudū'." 'Urwā supposedly told Ā'ishah, "It couldn't have been anyone but you." And supposedly Ā'ishah laughed. That Hadīth is weak with many issues in it, and among them is that Habīb Ibn Abi Thābit in its chain, he's classified as a Mudallis, Adh-Dhahabi said he's a Mudallis, among other issues in both its Isnād and and its Matn.

In Tafsīr At-Tabari, there is also another proof that they used. The proof that Umm Salamah said that the Messenger (ﷺ) kissed her while he was fasting, he didn't break his fast nor did he renew his Wudū'. It's also weak.

The Rājih is what we started off with. Touching a woman is not a nullifier of Wudū' due to the lack of clear, authentic proof indicating that, and also due to the proof that I mentioned where the Messenger (ﷺ) touched Ā'ishah and the proof where Ā'ishah touched the Messenger (ﷺ) while in Salāh, and the Messenger (ﷺ) didn't indicate that Wudū' was needed, nor did he break his Salāh, and he would never delay teaching us something so essential, so common.

We'll conclude with this.

وصلى الله على سيدنا محمد وعلى آله وصحبه وسلم